

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0220  
Sales and Use Tax  
For The Period: 1996-1998**

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**ISSUES**

**I. Sales/Use Tax: Lump Sum Contracts**

**Authority:** 45 IAC 2.2-4-26(a)

The taxpayer protests the imposition of tax on a contract that it characterizes as a lump sum contract.

**II. Sales/Use Tax: Application Server Kit**

**Authority:** 45 IAC 2.2-5-8(c)(5)

The taxpayer protests the taxation of a computer and its software.

**III. Sales/Use Tax: Pricing Station**

**Authority:** IC 6-2.5-5-3(b); IC 6-2.5-5-6; 45 IAC 2.2-5-14

The taxpayer protests the taxation of a pricing station.

**STATEMENT OF FACTS**

The taxpayer is a wholesaler in the photo processing business. The taxpayer has development centers around the country where film is processed.

**I. Sales/Use Tax: Lump Sum Contracts**

### **DISCUSSION**

The taxpayer protests the taxation of a lump sum contract for heating and air conditioning work done at an Indiana facility. Taxpayer has provided the Department with the heating and air conditioning company's specifications and estimates for the work. The document states that:

All materials, labor, *taxes*, permits and support equipment for the sum of [a price is given] ... (Emphasis added)

Taxpayer in its protest letter then cites 45 IAC 2.2-4-26(a):

A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used.

In other words, the contractor is responsible and liable for the payment of sales tax in a "lump sum" contract. The documentation submitted by the taxpayer evidences that the contract was a lump sum contract.

### **FINDING**

Taxpayer's protest is sustained.

#### **II.      Sales/Use Tax:      Application Server Kit**

The taxpayer also protests the taxation of an "application server kit"—i.e., a computer and the "software that enables the processing of APS (Advanced Photo System) film by passing information between different pieces of manufacturing equipment." (The information passed by APS to the equipment can be information like classic, wide, or panoramic).

45 IAC 2.2-5-8(c)(5) states that computer equipment (including related terminals, printer, and memory, data storage, and input/output devices) is exempt if used in a manner "integral and essential" in the "integrated production process."

The computer and the software are necessary for the processing of the film, and thus are an essential and integral part of an integrated manufacturing process.

### **FINDING**

The taxpayer's protest is sustained.

#### **III.      Sales/Use Tax:      Pricing Station**

### **DISCUSSION**

The taxpayer describes the pricing station thusly:

The pricing station [a piece of equipment with a computer attached] receives a dealer envelope, the outermost package containing customers processed photographs, with a bar code printed on it. It scans the bar code and then uses information obtained by the computer to print the appropriate pricing information on the envelope. The computer obtains its information directly from the billing system. The pricing process occurs before the sorting process, which is where photographs are sorted and inserted into the appropriate dealer envelope.

The taxpayer goes on to make the conclusion that since the “photographs cannot be sold without the pricing information printed on the dealer envelope” that the station is therefore “an essential and integral part of an integrated manufacturing process.”

At issue here is a piece of machinery, the pricing station, and its role (if any) in the production process. Indiana Code 6-2.5-5-3(b) states that machinery and equipment are exempt if used in the “direct production, manufacture, fabrication, assembly, ... processing, refining, or finishing of other tangible personal property.”

Indiana Code 6-2.5-5-6 is also relevant:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business. ...

And 45 IAC 2.2-5-14 in pertinent part says, “[M]aterial must be physically incorporated into and become a component of the finished product.”

The pricing station acts upon the *dealer* envelope, and not the prints/photographs. The photographs are the taxpayer’s product, and the envelopes are not part of the production process. Since the pricing station does not act upon the product (i.e., prints/photographs), but acts upon the dealer envelopes (which are not part of production), and the price is not incorporated into the product, the pricing station is taxable.

### **FINDING**

Taxpayer’s protest is denied.